

REMARKS

A reconsideration of this application is respectfully requested, wherein Claims 1-14 are pending in the application.

As an initial matter, Applicants express gratitude to the Examiner for the indication of allowable subject matter with regard to Claims 2, 3, 6-10, 12 and 13.

However, Claims 1, 4, 5, 11 and 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,109,792 to *Greenawalt et al.* in view of U.S. Patent No. 5,713,186 to *Bruhn*.

On pages 2-3 of the Official Action, the Examiner alleges that *Greenawalt et al.* meets all of Applicants claimed subject matter with exception that the filling is done by metering as opposed to being filled continuously. The Examiner seeks to rely upon the *Bruhn* reference to disclose that it is well known in the art to fill tubes continuously or by metering. The Examiner then concludes that it would have been obvious to one having ordinary skill in the art to have modified the method and apparatus of *Greenawalt et al.* to have continuously filled the tube and to have cut the tube while the tube is continuously filled, in place of metered fillings. The Examiner then concludes that the operation of *Greenawalt et al.* would perform as equally well with either metering or continuously filling of the tube, absent any evidence to the contrary.

In rejection claims under 35 U.S.C. §103, the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1956 (Fed. Cir. 1993). In order to establish a *prima facie* case of obviousness, the prior art teaching must be sufficient to suggest to one of ordinary skill in the art making the modification needed to arrive at the claimed

invention. See, e.g., *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984). Here, the Examiner attempts to shift the burden onto the Applicants by stating that the continuous filling would work just as well as metered fillings, absent evidence of the contrary. The Examiner provides absolutely no evidence as to why this might be the case. However, the subjective opinion of the Examiner without evidence and support thereof, does not provide a factual basis upon which legal conclusion of obviousness may be reached. See, *in re GPAC Inc.*, 57 F.3d 1573, 1582, 35 USPQ 2d 1116, 1126 (Fed. Cir. 1995).

Greenawalt et al. clearly teaches (see Figures 3 and 4 and description at column 5, line 51 to column 6, line 40) that the product is periodically introduced into the tube after the bottom end of the bag has been sealed by a pair of sealing heads 42, 44 and before the top end of the bag is in turn clamped by another pair of sealing heads 42, 44. The sealing heads 42, 44 of *Greenawalt et al.* act on portions of the tube that do not contain product. Therefore, one of ordinary skill in the art, at the time the invention was made, would have considered *Greenawalt et al.* as completely failing to offer any useful teaching towards providing a method as claimed in independent Claims 1, 4 and 5. *Greenawalt et al.* never suggests cutting the continuous product-filled tube of packaging material before sealing the inner services of the tube together through the product as defined in independent Claims 1, 4 and 5.

Bruhn is cited by the Examiner to show that continuous filling is "old and well known", but the Examiner fails to recognize that in all prior systems, the continuous filling is employed in methods wherein, contrary to what is claimed in independent Claims 1, 4 and 5, the sealed bands of packaging tube are cut only and exclusively

after the inner services of the tube are sealed together. *Bruhn* considered in its entirety confirms that the sealed bands of the packaging material tubes should indeed only be cut after the inner surfaces of the tube are sealed together.

As such, the combined teachings of *Greenawalt et al.* and *Bruhn* fail to provide any teaching whatsoever regarding cutting the continuous product-filled tube of packaging material before sealing the inner surfaces of the tube together through the product. As such, Applicants submit that the method and packing unit of independent Claims 1, 4 and 5, and the claims depending therefrom, is patentably distinguishable over the applied documents. Accordingly, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should any questions arise in connection with this application, or should the Examiner believe a telephone conference would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that she be contacted at the number indicated below.

Respectfully submitted,

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Date: May 25, 2004

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